

EXHIBIT NN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, et al.
Debtor,
-----X

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO
as representative of
THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,
Debtor.

450 Park Avenue
New York, New York
June 18, 2019 - 9:35 A.M.

EXAMINATION BEFORE TRIAL of GAURAV MALHOTRA, an
Expert Witness herein, taken by the attorneys for
the respective parties, pursuant to Notice, held at
the above-stated time and place, before Melissa
Leonetti, RPR, a Notary Public of the State of New
York.

1 G. MALHOTRA

2 THE VIDEOGRAPHER: We are now on the
3 video record. This is the video deposition
4 of Gaurav Malhotra in the matter of In Re:
5 The Financial Oversight and Management Board
6 for Puerto Rico, et al., held at the offices
7 of Jones Day, 450 Park Avenue, New York, New
8 York, on Tuesday, June 18th, at 9:35 a.m.

9 I am Martin Zinkel, the videographer.
10 The court reporter is Missy Leonetti. We are
11 from the firm of Advanced Depositions in
12 Philadelphia, Pennsylvania.

13 Appearances will be noted on the
14 stenographic record, and the reporter will
15 now swear in the witness.

16 GAUROV MALHOTRA, after having first
17 been duly sworn by a Notary Public of the State of
18 New York, was examined and testified as follows:

19 EXAMINATION BY

20 GEOFFREY S. STEWART, ESQ.:

21 Q. Good morning, Mr. Malhotra.

22 A. Good morning.

23 Q. You and I have met before?

24 A. Yes.

25 Q. It's nice to see you again. You have



1 G. MALHOTRA

2 Q. Do you see in the first full paragraph
3 there's a reference to something called a Pay-Go
4 fee?

5 A. Yes.

6 Q. Do you know what a Pay-Go fee is?

7 A. My assumption of the Pay-Go fee is the
8 costs related to paying benefits for ERS retirees in
9 any given year.

10 Q. If you could look at the definition of
11 Pay-Go fee. I'm not going to read it aloud, because
12 it's a little bit too long.

13 My question to you is going to be
14 whether your understanding of the Pay-Go fee is
15 consistent with what this definition provides on
16 page 15 of our exhibit.

17 A. I just need to read it once.

18 Q. Please.

19 A. Generally seems consistent.

20 Q. Let me ask you some questions about the
21 Pay-Go fee.

22 Who was it who actually paid a Pay-Go
23 fee?

24 MS DALE: Objection to the form of the
25 question.

1 G. MALHOTRA

2 Q. If you know.

3 MS DALE: Ever? When?

4 MR. STEWART: Just generally who pays
5 Pay-Go fees.

6 A. Hacienda pays the Pay-Go amounts.

7 Q. Who does Hacienda pay them to?

8 A. My understanding is that it actually is
9 being paid to the retirees directly.

10 Q. Where does the Pay-Go money come from?

11 A. It comes from the Commonwealth's budget.

12 Q. From any other source?

13 A. No.

14 Q. Do you know what account -- well,
15 actually, let me -- let's go to page 16. On page 16
16 under section 2.1, there's something described
17 called the --

18 MS DALE: Where are you --

19 MR. STEWART: Page 17. I apologize.

20 Q. Let me back up to page 16. Sorry to be
21 jumping around.

22 Do you see in the middle of the page 16
23 under the subparagraph R, there's something
24 defined called an Accumulated Pension?

25 A. Yes.



1 G. MALHOTRA

2 Q. Do you know what an accumulated pension
3 is?

4 MS DALE: Objection to the form of the
5 question.

6 Are you asking him what this defined
7 term is or just generally?

8 MR. STEWART: I guess let me start
9 generally, then I'll move to his term.

10 A. Generally it's based on years of service
11 a certain employee has accrued in terms of what
12 their pension benefit will be is what I would assume
13 that accrued pension is.

14 Q. Let's go now to page 17.

15 Do you see at the top of the page
16 there's a header, section 2.1, Accumulated
17 Pensions Payment Account? Do you see that?

18 A. Yes.

19 Q. Do you know what the accumulated pensions
20 payment account is?

21 A. I do not.

22 Q. Or where it is held?

23 A. No.

24 Q. Or how it is funded?

25 A. No.



1 G. MALHOTRA

2 Q. Or what it is used for?

3 A. I mean, the accumulated pensions payment
4 account, this particular account, I have not heard
5 -- come across that definition before.

6 Q. Okay. You can close this exhibit, then,
7 if you haven't seen it.

8 A. (Witness complies.)

9 Q. Do you know how Hacienda makes payments
10 to retirees?

11 A. My understanding is that it's done on a
12 monthly basis in terms of the retiree checks that --
13 or the pension checks that need to be made to the
14 retirees on the monthly basis, Hacienda is making
15 those payments.

16 Q. Do you know how Hacienda knows how much
17 the payment should be?

18 A. I do not.

19 Q. Do you know what the chart of accounts is
20 at Hacienda in terms of tracking which account those
21 payments are made from?

22 MS DALE: Objection to the form of the
23 question.

24 A. In terms of which specific bank accounts
25 those checks are made out of, I do not know exactly



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2 which bank accounts, because I assume Hacienda has
3 lots of different bank accounts. I don't know which
4 particular different bank account the checks go out
5 of.

6 Q. In terms of Hacienda's accounting, do you
7 know which journal entries are made to reflect those
8 payments to retirees?

9 A. I do not.

10 Q. Or what accounts those journal entries
11 are made with respect to?

12 A. I do not.

13 Q. Do you know of something called -- I
14 think I've asked you about Pay-Go fees. Do you know
15 what is the difference, if any, between a Pay-Go fee
16 on one hand and the amount Hacienda pays retirees on
17 the other?

18 A. My assumption it would be the same
19 amount.

20 Q. Would it, in fact, be the same thing as
21 opposed to the same amount?

22 A. The payments of current retiree checks
23 would be -- would be -- would be the Pay-Go fees.

24 Q. Okay.

25 Are you aware that public corporations

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2 in the Commonwealth are required to periodically
3 make payments to Hacienda with respect to
4 retirement benefits?

5 A. Yes.

6 Q. What are those payments?

7 A. Those would be the payments for the
8 retirees of those public corporations that the
9 public corporations need to make.

10 Q. Okay. And that's how the Pay-Go system
11 works?

12 A. Yeah. That is my understanding.

13 Q. Okay. What's the name given to those
14 payments?

15 A. The payments from the corporations?

16 Q. Yes.

17 A. Those would be the payments that are due
18 for the retirees of the corporations, and then they
19 would -- if Hacienda has made the payments on behalf
20 of those corporations, those payments would be paid
21 back to Hacienda.

22 Q. By the public corporations in this case?

23 A. That's correct.

24 Q. What do you call those payments?

25 A. Reimbursements.



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2 Q. Are you aware of similar payments made by
3 the Commonwealth itself?

4 MS DALE: Objection to the form.

5 A. Commonwealth that has made on behalf of
6 other like municipalities, for instance?

7 Q. No, the Commonwealth on behalf of the
8 Commonwealth.

9 A. I'm not sure I understand the question.

10 Q. Let me ask this: With respect to
11 municipalities, do they pay a similar reimbursement
12 to Hacienda?

13 A. They're supposed to, yes.

14 Q. But that changed recently with Act 29?

15 MS DALE: Objection to the form.

16 To the extent you understand.

17 Q. Just say yes or no.

18 A. It is still being pursued in terms of
19 collecting from the municipalities for their portion
20 of payments made to their retirees.

21 Q. There is a statute we can mark called Act
22 29.

23 A. Yes. I don't remember the exact act
24 number, but I'm aware.

25 Q. You've seen Act 29 before?



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2 A. I've heard about it. I have not studied
3 it.

4 MR. STEWART: Let's mark it so it's in
5 the record as Malhotra Exhibit 6.

6 (Whereupon, Act 29 was marked as
7 Malhotra Exhibit 6 for identification, as of
8 this date.)

9 Q. Mr. Malhotra, the reporter's placed
10 before you Malhotra Exhibit 6, which is a certified
11 translation of something called Law 29 of May 17,
12 2019.

13 Have you seen this provision either in
14 Spanish or in translation before?

15 A. I have not seen this entire provision,
16 no.

17 Q. Do you know what it does or purports to
18 do?

19 A. I believe -- and I need to confirm it --
20 that this law is about not having municipalities
21 required to make contributions, but I would need to
22 confirm it.

23 Q. But you said that something with respect
24 to this is still under consideration?

25 A. Yeah. It would not necessarily be



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2 consistent with the fiscal plan.

3 Q. That's a matter of being dealt with the
4 board on one hand and the central government on the
5 other?

6 MS DALE: That's a yes or no.

7 A. Yes.

8 Q. Are you involved in those discussions?

9 A. Not directly.

10 Q. Did you take Law 29 into account in the
11 net present value analysis that you conducted?

12 A. Not directly.

13 Q. How did you take it into account, if at
14 all?

15 A. We separately quantified the impact of
16 the Pay-Go associated with the retirees of the
17 municipalities and the NPV of that.

18 Q. And so you did your calculation both
19 including and not including the municipalities'
20 Pay-Go?

21 A. That's correct.

22 Q. I was asking you about -- where the money
23 to make these payments of retirees came from. I
24 believe you said they were reimbursements from
25 public corporations and subject to this Law 29,



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reimbursements from municipalities, correct?

A. Just to clarify, the money came from the central government's budget is what I had clarified, that that's how the pension payments for the retirees are being made today is from the budget of the central government.

And reimbursements for those retirees that are associated with the public corporations and the municipalities are amounts owed back to the central government from those entities.

Q. You referred to those as retirements?

A. That's correct.

Q. Many of the retirees are people who had worked for the central government during their careers, correct?

A. Yes.

Q. And so Hacienda makes retirement payments to those people as appropriate, correct?

A. That's correct.

Q. What means of reimbursement, if any, is there from the central government to Hacienda with respect to retirement payments to people who retired from the central government?

A. Could you ask that question again,



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please.

Q. I'm just going to repeat it.

What means of reimbursement, if any, is there from the central government to Hacienda with respect to retirement payments made to people who retired from the central government?

A. I do not know if there is any specific reimbursement from central government.

Q. All right. Do you know how the amount of the reimbursement is calculated?

A. Yes. It is supposed to be the actual payments that are made more specific retirees associated with the municipalities or the corporations.

Q. Do you know who calculates that amount?

A. I do not.

Q. Do you know if the amount is calculated in advance or calculated after the retiree payments have been made?

A. I'm not sure about that.

Q. Do you know the mechanism by which various employers are told what to pay?

MS DALE: Objection to the form of the question.



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2 A. My understanding is it is based on the
3 actual payments that go to their specific retirees
4 on a monthly basis is the source of the data.
5 That's the extent of my understanding around it.

6 Q. But you -- do you know whether employers
7 receive invoices from anybody?

8 A. My understanding is that there are
9 invoices that are sent out, but I'm not sure about
10 it.

11 Q. Do you know who sends the invoices?

12 A. My assumption would be Hacienda. I'm not
13 sure.

14 Q. Let's go back to your declaration, which
15 is Malhotra Exhibit Number 1. I think you
16 testified, Mr. Malhotra, you've been retained today
17 serve as an expert by the Proskauer Law Firm in
18 connection with the motion brought by the
19 bondholders for relief from the stay; is that
20 correct?

21 A. That is correct.

22 Q. And that motion is to be heard on July
23 2nd here in New York by Judge Swain?

24 A. That is my understanding.

25 Q. I assume you plan to attend the hearing?



1 G. MALHOTRA

2 adds up the claim amount for Series A, B, and C.

3 Q. Is that document identified as one of the
4 materials you considered on page 8 of your report?

5 A. I don't see it here.

6 Q. Okay. Who prepared that spreadsheet?

7 A. It would be my team. It would be a
8 summary from the claim file that was publicly
9 available.

10 Q. When did they prepare this spreadsheet?

11 A. Probably in the last month or so.

12 Q. Okay.

13 MR. STEWART: We would request that be
14 produced, please.

15 MS DALE: Sure.

16 Q. Now, in the course -- you go on to say in
17 paragraph 7 -- you've excluded the Teachers'
18 Retirement System and the Judiciary Retirement
19 System, correct?

20 A. Correct.

21 Q. And going back to your paragraph 7, did
22 you, in fact, reach an opinion of the net present
23 value of projected retirement benefit payments to be
24 paid by the Commonwealth to pensioners who
25 participated in the ERS retirement system?

1 G. MALHOTRA

2 A. Yes.

3 Q. Is that set forth in paragraph 14 of your
4 declaration?

5 A. Yes.

6 Q. And in Exhibit 1A, which follows
7 paragraph 14?

8 A. That is correct.

9 Q. Did there come a time when you were asked
10 to expand the scope of your work beyond what is set
11 forth in paragraph 7?

12 A. The context of the work was not expanded.
13 We probably had more detail that was provided, but
14 the context of the work did not expand.

15 Q. Did there come a time when you were asked
16 to also give an opinion with respect to the report
17 submitted by the bondholders' expert, Dr. Faten
18 Sabry?

19 A. Yes.

20 (Whereupon, a Rebuttal Declaration was
21 marked as Malhotra Exhibit 7 for
22 identification, as of this date.)

23 Q. Mr. Malhotra, the reporter's placed
24 before you Malhotra Exhibit 7.

25 Is this your rebuttal declaration?



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2 A. Yes.

3 Q. And that's what you described to us
4 earlier as the ProVAL analysis?

5 A. Yes. That's the raw data file that has
6 now been provided as well.

7 Q. And so now you've told us everything you
8 considered in reaching your opinions?

9 A. Yes.

10 Q. All the facts and all the data?

11 A. To the best of my understanding, yeah.

12 Q. Okay. Are you aware that the bondholders
13 have retained professor Andrew Samwick to testify as
14 an expert on their behalf?

15 A. Yes.

16 Q. Have you read Professor Samwick's report?

17 A. Not in detail, but I have -- I have
18 looked at it, yes.

19 Q. Do you consider yourself competent to
20 agree or disagree with the opinions Professor
21 Samwick expresses?

22 A. I would not be able to agree or disagree.

23 Q. Do you plan to offer any opinion with
24 respect to the work of Professor Samwick?

25 A. I do not.



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2 assumptions in a number of areas.

3 First of all, did you assume one way or
4 the other for purposes of your exercise whether
5 the bondholders had a valid security interest?

6 A. That was not considered.

7 Q. Okay. Were you told to assume that the
8 amount of benefits paid to retirees would equal the
9 amount of reimbursements paid to Hacienda by the
10 government employers?

11 MS DALE: Objection to the form.

12 A. Could you ask that question again,
13 please.

14 Q. Were you told to assume that the amount
15 of retirement benefits to be paid to retirees would
16 equal the amount of reimbursements Hacienda would
17 receive from the government employers?

18 MS DALE: Same objection.

19 A. No. We were told to calculate the total
20 cost of the retiree payments that were due in any
21 given year.

22 Q. Without regard to whether there was
23 sufficient reimbursement to make Hacienda whole for
24 those retirement payments?

25 MS DALE: Objection.



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2 A. Correct. That was not a consideration.

3 Q. Were you told to assume that the stream
4 of payments -- I'm now going to ask you about the
5 bondholders' claim and assumptions you may have made
6 or may not have made about the bondholders' claims.

7 A. Okay.

8 Q. Were you told to assume the stream of
9 payments to the bondholders would continue until
10 2058?

11 A. That was not an assumption that we
12 included.

13 Q. You understand that the last scheduled
14 payment on the bonds is in the year 2058, correct?

15 A. That is correct.

16 Q. Okay. Were you -- did you assume that
17 the payments to the bondholders would occur in the
18 amounts and on the schedule set forth in the
19 underlying bond documents?

20 A. That was not a part of our Pay-Go
21 calculations.

22 Q. Were you told to assume that schedule
23 would not change in any way?

24 A. No.

25 Q. You understand that because ERS and the



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factor at 3.58 percent is multiplied by the column
titled Pay-Go Net of Municipalities?

A. Yes.

Q. That's footed to a number that's
23,064,775?

A. Yes, at 3.79 percent -- oh --

Q. That's at 3.58 percent?

A. That's right.

Q. And then the far right two columns do the
same exercise at a higher discount rate, correct?

A. That's correct.

Q. Okay. This is the calculation that found
its way into Exhibit 1A of your report?

A. Yes.

Q. What does that calculation purport to
tell us?

A. It says that the total amount of
forecasted ERS Pay-Go of 26.9 billion on a present
value basis at 3.58 discount rate is in excess of
the estimated \$3.8 billion bonds.

Q. Now, in conducting your analysis, the --
let's stay on Exhibit 8 -- Pay-Go numbers that you
used were the numbers that Hacienda was expected to
pay to retirees in all of those years, correct?



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2 A. That is correct.

3 Q. With the adjustments that you've told me
4 about for municipalities and without municipalities?
5 You calculated it both ways?

6 A. Yes.

7 Q. Okay. Did you give any consideration to
8 conducting this analysis with respect to the
9 reimbursements Hacienda would receive from
10 government employers instead of the amounts Hacienda
11 would pay to retirees?

12 A. No.

13 Q. Why not?

14 A. Because we -- we're considering Hacienda
15 and the Commonwealth to be the same. The
16 Commonwealth would essentially be reimbursing itself
17 is what that would equate to, so we did not.

18 Q. Did you give any thought to conducting
19 this analysis with respect to the reimbursements
20 Hacienda could expect from public corporations and
21 municipalities?

22 A. Yes. We calculated the public
23 corporations and the municipalities separately, and
24 so we sort of laid those out separately to know what
25 the impact is if either of them decide not to pay.



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2 Q. Where is that set forth?

3 A. So the Pay-Go for municipalities is the
4 fifth column here, which is the 57/58 aggregate or
5 the 5.8 billion.

6 Q. You're referring to the footing at the
7 bottom of that column?

8 A. Yes.

9 Q. Okay. Where is the analysis for the
10 public corporations?

11 A. So the non-fiscal plan corporations, I
12 think the total of that 3.6 billion, we have to go
13 to the ProVAL report. And again, if we look at the
14 total of 47.7 billion less, what we know is the
15 total fiscal plan agencies and the corporations,
16 less the 5.8 billion for the municipalities, you can
17 actually back into the 3.6 billion. Because we have
18 the aggregate 47.7 that is basically provided from
19 our ProVAL report and its aggregate, and then we
20 have the individual components to be able come up
21 with what the non-fiscal plan's corporations is.

22 Q. I think you're going to have to help me
23 with that one more time.

24 A. Sure.

25 Q. First of all, are all public corporations



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2 Q. Okay.

3 A. I do not know how many they are.

4 Q. On Exhibit 1A, show me, if you could, how
5 you went from the calculation on Exhibit 8 to get
6 the numbers on Exhibit 1A, starting with FP
7 agencies.

8 A. So FP agencies, the 31.9 and the 6.4
9 together make up the 38.353.

10 Q. So how do you know which is which?

11 A. I would have to go back to, I think, a
12 ProVAL report or -- to be able to break down.

13 So in the overall census data file, at
14 the end of census data file, there is a coding
15 that says who is a fiscal plan entity, who is not
16 a fiscal plan entity, what is a corporation.

17 So there is actually a listing in that
18 census data file that says here's how every
19 employee is in the last most column coded to
20 either a corporation or an agency.

21 So we would have to go back to that to
22 do the breakdown. But in aggregate, those two
23 numbers would be the 38.3.

24 Q. In order to double-check your math, I
25 would need to go to ProVAL to disaggregate the 38.3;

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is that right?

A. That's right. Or we could probably provide it separately.

Q. And then we would do the same exercise for the other columns on Exhibit -- on Exhibit 1, the table found in Exhibit 1A, to get the numbers under the NPVs; is that right?

A. That is correct.

Q. I see. So how did you derive the number for the non-NPV corporations?

A. That would similarly be done through ProVAL. But over here, the way to actually do it on this sheet is you start with the 47.7 and you back out, you know, subtract from the 47.7 the 38.3 -- so the 47.7 is an output which has all participants in ERS.

From there, if we were to subtract the 38.3 which would cover all of the fiscal plan agencies and corporations and then subtract from it the municipalities, the remaining would be the non-fiscal plan corporations.

Q. Okay. So if we're looking at our table, which is denominated as Exhibit 1A on Exhibit 1, it calculates that the present value, the net present



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value of this stream of payments equals, depending on the discount rate, 26.9 billion or 26.2 billion, correct?

A. That is correct.

Q. How is that to be paid to the bondholders?

MS DALE: Objection to the form of the question.

A. The current assumption shows the overall Pay-Go over the course of this time period through 2058 that is available to be paid to retirees of the systems.

Q. My question was not the retirees. It was to the bondholders.

How are the bondholders to be paid from this income stream?

A. There is not an assumption of paying bondholders in this payment stream as currently scheduled, because it is only payments to the retirees today.

Q. Do you have any idea how this payment stream would be directed in a way to pay the bondholders?

A. I think it would be a legal question in

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2 terms of how the existing funds would get allocated
3 towards the bondholders.

4 Q. Have you assumed that the bondholders
5 have a security interest on the payments that are
6 made to retirees?

7 A. We have not made that assumption in the
8 forecast.

9 Q. Let's just stay with Exhibit 8, which has
10 these discount rates. The discount rates you chose,
11 one was 3.58 percent and the other was 3.79 percent,
12 correct?

13 A. That is correct.

14 Q. Each was taken from an index published by
15 the bond buyer?

16 A. Yes.

17 Q. And that was for a basket of 20 municipal
18 bonds?

19 A. That's right.

20 Q. Each of which had a maturity of 20 years?

21 A. Yes.

22 Q. This pay stream has a maturity of 29 more
23 years?

24 A. This has roughly about 40 years, yes.

25 Q. Goes to 2058?



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A. Yes.

Q. What weight did you give when you chose the discount rate for the fact this payment stream was going to run for 39 years instead of 20 years?

A. I didn't consider that to be that much different, because this was still a long-term nature. We were not using a short-term index. We were using a fairly reasonably long-term index, so we did not consider going any further than the 20 years.

Q. Did you do any procedures to see how 40-year bonds compared to 20-year bonds in terms of the interest rate they bear when the bonds are similarly rated?

MS DALE: Objection to the form.

A. I did not, because with GASB 67, it sort of had certain, you know, suggestion with respect to the using a 20-year bond index, so that's what we used in terms of coming up with the calculation.

Q. Okay. The basket of bonds that the bond buyer uses are rated investment grade, correct?

A. That is correct.

Q. Would you view this stream of payments going to retirees from the Commonwealth to be



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2 investment grade?

3 A. I view the stream of payments going to
4 the retirees in the Commonwealth as a pretty strong
5 credit in terms of the security of making sure those
6 retirees will get those checks.

7 Q. Did you take into account the forecast of
8 what percentage of the Commonwealth's budget will be
9 quoted to retirement benefits in the coming years?

10 A. I did not look at the percentage of the
11 overall budget that would be allocated just to
12 Pay-Go in the analysis, because it is an overall
13 liability or -- that would continue to reduce over a
14 period of time as we go into the long-term future.

15 So it wasn't an increasing liability.
16 Although the payments will be flat over the
17 foreseeable future, these will start eventually
18 declining.

19 Q. Are you aware of the rate -- the yield, I
20 should say -- on the Commonwealth's general
21 obligation bonds today?

22 A. No.

23 Q. Are you aware it's over 17 percent?

24 A. I had read in the expert report it was
25 stated to be 17 percent for that specific bond

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2 yield. But in my view, I view the payment stream to
3 retirees under a completely different lens.

4 Q. Did you give any consideration to using
5 discount rates other than the two discount rates we
6 see in Exhibit 8?

7 A. No, I did not. There was a sensitivity
8 in the Milliman report that went sort of 3.58
9 percent, what Pay-Go would be at 4.58 or -- I think
10 that's what their report said.

11 But at the time of doing this analysis
12 here, we did not consider any other discount
13 rates.

14 Q. And you have never done an analysis with
15 any other discount rates, correct?

16 A. I've run sensitivities after we got the
17 last expert report to analyze if we were to change
18 3.58 percent to a much higher number, theoretically
19 what could it be. But with the point being even if
20 we use a much higher discount rate, the present
21 value would still be in excess of the bond claim.
22 That was more from an analytical standpoint to
23 change my opinion in any way.

24 Q. The analysis you just described to me,
25 was that recorded in a spreadsheet of some sort?



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2 A. I don't know if it was recorded. This is
3 like you can enter one number and it gives you the
4 present value. I don't know if we have saved any
5 other versions that would say here's what this looks
6 like under different discount rates.

7 Q. In your rebuttal report, did you talk
8 about the fact that even at higher discount rates,
9 the bondholders' claim would be less than the net
10 present value?

11 A. I do not see it or do not recall.

12 Q. Okay. Is that an opinion given in your
13 rebuttal declaration?

14 A. No.

15 Q. Do you intend to give any opinion of that
16 sort at the hearing on July 2nd?

17 A. Not specifically unless counsel asks me
18 for it, but I'm not planning to add anything to my
19 rebuttal report.

20 Q. Did you check to see whether a version of
21 what we have before us of Exhibit 8 was saved where
22 a higher discount rate was used?

23 A. I can check, but I do not believe there
24 would be something where higher discount rates would
25 be used for the payment stream for the retirees for



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2 this particular analysis.

3 Q. I understood you just say a minute ago --
4 and perhaps I misunderstood you -- that you or
5 someone on your team had taken the spreadsheet that
6 we see as Exhibit 8 and run it with different
7 discount rates? Did I misunderstand you?

8 A. That is fair.

9 Q. You don't know one way or the other
10 whether any of those versions of the spreadsheet
11 were saved?

12 A. I do not know, but I can check.

13 Q. Okay. Who was it who ran the different
14 versions?

15 A. It would be one of the team members. I
16 do not recall as to who. One of the team members
17 that was actually on the list from earlier, but I
18 don't know who actually would have done it.

19 Q. In any event, at the hearing, you don't
20 plan to offer any opinion of what results you would
21 get if your analysis were run at different discount
22 rates, correct?

23 A. Not that I know of as of now.

24 Q. Okay.

25 MS DALE: I would just point out if you



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2 were to ask him something on
3 cross-examination that would elicit that
4 opinion, he would give it.

5 MR. STEWART: In that case, that report
6 should have been turned over to us and not
7 only wasn't but wasn't saved, which probably
8 raises issues we should probably all want to
9 stay away from.

10 Do you want to take a break?

11 MS DALE: Totally up to you.

12 MR. STEWART: Let's do it.

13 THE VIDEOGRAPHER: Off the video
14 record, 12:03 p.m.

15 (Whereupon, there was a pause in the
16 proceeding.)

17 THE VIDEOGRAPHER: We are back on the
18 video record, 12:18 p.m.

19 Q. Before the break, Mr. Malhotra, I asked
20 you about the discount rate that you had used, and
21 you had explained to me why you set it at the level
22 you did.

23 Was one of the factors, in your
24 judgment, the fact that the payments that would be
25 going to retirees would come from the general

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2 assets of the treasury?

3 A. Actually, no. The reason to use it,
4 there were no other assets available to fund the
5 systems or -- you know, the payments due to the
6 retirees, and using that discount rate was a good
7 measure to predict the certainty these payments were
8 going to be made so they were more fixed in nature
9 than variable in nature.

10 Q. If you were to assign a discount rate
11 solely to the stream of reimbursements to Hacienda
12 from public corporations and municipalities, would
13 you have used the same discount rate?

14 A. I would use the same discount rate for
15 those payments that need to be made to the retirees
16 of the municipalities in the corporations.

17 Q. And those payments would be coming from
18 the general counsel, the treasury, correct?

19 A. They would come from the Commonwealth,
20 yes.

21 Q. And that includes revenues that come to
22 the Commonwealth from general taxes?

23 A. Yes. All the sources of revenue, yeah.

24 Q. Let me ask you this: If you were asked
25 to use a discount rate solely for the stream of



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2 reimbursements going to Hacienda from public
3 corporations and from municipalities, would you use
4 the same discount rate to reach a net present value
5 of that stream of payments?

6 A. I would have to think about that.
7 Because the question on -- there is higher degree of
8 risk for -- given what we have seen for
9 reimbursements to the municipalities from Hacienda.

10 But that is not a topic in terms of how
11 I have looked at it, because in my view, what I
12 have looked at the payments that go to retirees
13 regardless of -- the appointments that go to the
14 retirees or the municipalities or the corporations
15 have the same risk profile as that of the
16 Commonwealth regardless of the reimbursement that
17 is coming from the municipalities of the
18 Commonwealth.

19 Q. Okay.

20 MR. STEWART: Let's mark some more
21 exhibits here.

22 (Whereupon, an AAFAF document was
23 marked as Malhotra Exhibit 9 for
24 identification, as of this date.)

25 Q. Mr. Malhotra, the reporter's placed

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2 Q. To your knowledge, is the financial
3 information contained in Exhibit 10 accurate?

4 A. I have no reason to believe it would not
5 be.

6 Q. On page 2 of Exhibit 10, there are
7 tables. The title of the tables is Public
8 Corporations and Municipalities That Owe at Least
9 \$1.00 MM in Pay-Go Debt.

10 Do you see that?

11 A. Yes.

12 Q. Do you understand what those two tables
13 purport to show?

14 A. Yes.

15 Q. What is it that they purport to show?

16 A. That between 2018 and 2019 combined,
17 public corporations owe 187 million and
18 municipalities between 2018 and 2019 combined own
19 127 million back to the Commonwealth.

20 Q. In reimbursements?

21 A. In payments that the Commonwealth has
22 made on behalf of their specific retirees, and they
23 should be reimbursing the Commonwealth for it.

24 Q. In the course of your work as an expert,
25 what consideration, if any, did you give to the data

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2 that we see in Malhotra Exhibit 10?

3 A. The data that I looked at was what is the
4 aggregate amount of Pay-Go that is due to the
5 municipalities' retirees as one of the main items.
6 We also broke out what is the amount due from public
7 corporations.

8 But looking at the amount from
9 municipalities is the piece that I had looked at
10 in the context of total Pay-Go that is due to the
11 municipalities' retirees.

12 Q. Okay. So my question was: In reaching
13 your opinions as an expert, which weight, if any,
14 did you give to the financial information we see on
15 page 2 of Malhotra Exhibit 10?

16 A. Not much.

17 Q. Why not?

18 A. Because, as I said earlier, my view is
19 that these are actual retirees today getting a
20 pension check. And, you know, as of now, I have not
21 seen anything that would question whether any of
22 these retirees are going to get paid or not
23 regardless of the -- regardless of whether the
24 entity's reimbursed.

25 So while the letter definitely is



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encouraging the municipalities or the government to really collect all of these amounts due from the municipalities and corporations, the actual retiree collecting that pension check, my view was that that is not going to get impacted over the foreseeable future.

Q. And so there was no connection you could see between the financial information on page 2 of Malhotra Exhibit 10 on one hand and repayment to the bondholders of the debt they believe is owed to them?

MS DALE: Objection.

A. The repayment to the bondholders -- my point is there is -- there is money that is -- the 47.7 billion in aggregate Pay-Go that we're talking about, that is what the Commonwealth is going to be spending for all retirees.

If the bondholders have to get repaid, the Commonwealth will have to find -- will have to be able to pay that, let's say, from the 47.7 billion, whatever the amount will be due, and will have to sort of figure out how to come up with the gap to continue to pay its pensioners.

Q. So you don't see a direct relationship



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2 between the reimbursements owing the Hacienda and
3 the bondholders' ability to be paid?

4 A. I think the relationship that exists is
5 if there is fewer proceeds or less money available
6 to the Commonwealth because there is less of a
7 reimbursement, that means that -- you know, it
8 doesn't change the 47.7 billion obligation of the
9 Commonwealth.

10 In terms of the connection of the
11 bondholders getting repaid, that's something I
12 need to think through further in terms of the
13 direct impact, because the Commonwealth is
14 assuming that the reimbursements will come through
15 from the municipalities and the corporations.

16 Q. And in your analysis, you didn't see that
17 it would be the reimbursements that would be the
18 basis for repaying the bondholders?

19 A. Yeah. We, in these scenarios, did not go
20 through a repayment cycle. As I said earlier, we
21 were only focused on total Pay-Go.

22 Q. The answer to my question is no?

23 A. We did not do any analysis to compare
24 reimbursements from municipalities with any form of
25 bondholder payments. We did not conduct any

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2 analyses like that.

3 Q. Made no assumptions on the point, either?

4 A. That is correct.

5 Q. Let's go back to Malhotra Exhibit 8.

6 That's the one -- the spreadsheet. On the text side
7 of it, there's the various disclaimers.

8 Do you see that?

9 A. Yes.

10 Q. It depends what side of the document we
11 put the stamp on. I guess this is the first side of
12 the document.

13 Why was it that EY issued disclaimers
14 with respect to the analysis on Malhotra Exhibit
15 8?

16 A. I believe this would be the team's
17 standard disclaimer.

18 Q. And is the disclaimer anything more than
19 boilerplate?

20 A. I would have to read it, because this had
21 our actuaries working on the information as well, so
22 --

23 Q. Well, let's go through it.

24 A. Okay.

25 Q. If we look at one, two, three, four,

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2 going forward.

3 Q. Later in the sentence, there is a
4 reference to, quote, ongoing cleanup taking place.
5 What is that?

6 A. My assumption is that would be Milliman
7 continuing to work through the census data and
8 refining it, probably, as they get ready for the
9 next actuarial report and the corresponding census
10 data for that.

11 Q. Okay. If we go further up, the sixth
12 paragraph says: There will usually be differences
13 between projected and actual results because events
14 and circumstances frequently do not occur as
15 expected, and those differences may be material.

16 Do you see that?

17 A. Yes.

18 Q. Okay. First of all, what did EY mean
19 when it used the word "material"?

20 A. I don't recall and I do not -- maybe -- I
21 would like to see if some of that was a direct
22 reference from a Milliman report, but what may be
23 material for one particular year could be the
24 context, but I'm not sure.

25 Q. What would be the test for materiality,



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2 as that phrase is used in this sentence?

3 A. I can't say.

4 Q. Okay. How would we know whether a
5 difference is or is not material, as that word is
6 use in this sentence?

7 A. I really can't -- there is -- in terms of
8 a threshold from a year or year basis, you know, I
9 -- it wouldn't be sort of changing more than -- I
10 don't know -- 5 percent or something like that, in
11 my experience.

12 But generally for a population of this
13 size and this makeup of a significant number of
14 retirees who have already retired, unless we have
15 dramatically new entrants come through, I don't
16 anticipate, you know, really material changes on
17 an annual basis that I can foresee.

18 Q. Okay. But the disclaimer is here,
19 though. It says there usually will be differences,
20 correct?

21 A. Yes, because the model makes predictions
22 on the number of people that die every year or -- so
23 those are all theoretical models based on tables.
24 There are sometimes changes -- the actual
25 realization of the number of people that die in any

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2 given year within the overall census cannot be
3 predicted perfectly, but it's based on industry
4 practice based on models around that.

5 Q. "As a result, no assurance regarding the
6 achievement of forecasted results is provided, and
7 reliance should not be placed an any forecasted
8 results or projects contained herein, as some
9 information is subject to material change and may
10 not reflect actual results."

11 Do you see where I just read?

12 A. Yes.

13 Q. There's a typo in there. The word
14 "projects" should be projections; isn't that right?

15 A. Yeah. Yes.

16 Q. Why did EY say reliance should not be
17 placed on any forecasted results or projections
18 contained herein?

19 A. I think that's our standard disclaimer
20 language. I read through it. I was comfortable
21 with these projections based on -- even comparing it
22 to the Milliman projections, that in aggregate, the
23 projections that our team has come up with are very,
24 very close on an annual basis to the Milliman
25 projections.

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2 Q. And what two documents were compared to
3 support the statement you just made?

4 A. The documents that would have been
5 compared -- there is a Milliman letter --

6 Q. Is it the last page of Exhibit 1? Is it
7 one of the materials considered?

8 A. Yes.

9 Q. Which letter? There's a few Milliman
10 letters here.

11 A. I believe it would be material considered
12 Number 5 --

13 Q. Number 5. Okay.

14 A. -- which would have an annual layout of
15 all total Pay-Go precut on an annual basis for 2049,
16 I believe, or 2048, and I compared that to our total
17 Pay-Go costs, and again, on a precut basis, and
18 those numbers were within an aggregate half a
19 percent of each other and in no particular year, I
20 thought the tolerance level was about 1 1/2 percent
21 in the outer years.

22 But my view of looking at those two on
23 an apples-to-apples basis is the numbers were very
24 close.

25 Q. What was the EY document that the



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2 Milliman letter was compared against?

3 A. I would have to look at it. Either it
4 would be Exhibit 8 or the ProVAL. It would be one
5 of the two documents.

6 Q. Okay. So let's go back to Malhotra
7 Exhibit 8 and the disclaimers that we were talking
8 about.

9 It says: Reliance should not be placed
10 on any forecasts or results projections herein.

11 Correct?

12 A. Yes.

13 Q. In your report, did you rely upon the
14 forecasted results we see in Malhotra Exhibit 8?

15 A. In my report, I did rely on the
16 information under Exhibit 8 as one of the pieces
17 that went into this document.

18 Q. Was there any other net present value
19 calculation you relied on besides what we see in
20 Exhibit 8?

21 A. Not that I recall.

22 Q. Okay.

23 (Whereupon, a letter was marked as
24 Malhotra Exhibit 11 for identification, as of
25 this date.)

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2 as opposed to receiving it over the next 39 years?

3 A. No.

4 Q. So you assume they would receive it in
5 installments over each of the next 39 years?

6 A. I've assumed neither, because what I have
7 assumed is that the amount of Pay-Go that is
8 available -- if Pay-Go is available, that if it
9 needs to be paid to the bondholders, it is
10 available.

11 And then what we're showing is that
12 over the first ten years, the overall present
13 value of the Pay-Go is -- you know, far exceeds
14 the overall bond claim to the magnitude of three
15 times.

16 Q. And Pay-Go, as you've used it here, is
17 the money being paid out to retirees?

18 A. That's correct.

19 Q. Let me ask you, if we could -- if we can
20 look at paragraph, there's a table. Exhibit A on
21 page 3.

22 Do you see the graphic there?

23 A. Yes.

24 Q. What does that show?

25 A. That shows that on an annual basis,

